

TO AMEND THE IMMIGRATION AND NATIONALITY ACT TO EXTEND THE VISA WAIVER PILOT PROGRAM, AND TO PROVIDE FOR THE COLLECTION OF DATA WITH RESPECT TO THE NUMBER OF NONIMMIGRANTS WHO REMAIN IN THE UNITED STATES AFTER THE EXPIRATION OF THE PERIOD OF STAY AUTHORIZED BY THE ATTORNEY GENERAL

NOVEMBER 7, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2578]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2578) to amend the Immigration and Nationality Act to extend the visa waiver pilot program, and to provide for the collection of data with respect to the number of nonimmigrants who remain in the United States after the expiration of the period of stay authorized by the Attorney General, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

This legislation will extend through September 30, 1999, the Visa Waiver Pilot Program, under which certain foreign tourist and business visitors are permitted to enter the United States without a visa.

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 2578 extends the Visa Waiver Pilot Program under section 217 of the Immigration and Nationality Act ("INA") through September 30, 1999, and requires the Attorney General to collect data and report to Congress on the number of aliens who overstay their authorized period of admission to the United States.

THE VISA WAIVER PILOT PROGRAM

Background

Section 313 of the Immigration Reform and Control Act of 1986 (IRCA) established the Visa Waiver Pilot Program (VWPP) to permit tourists and business visitors from certain countries to enter the United States for up to 90 days without first obtaining a visa.

The VWPP was first implemented for a 3-year period starting in FY 1988 and has since been extended by Congress. Section 635 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208, Div. C) ("IIRIRA") extended the program for 1 year, through September 30, 1997. Without a further extension, therefore, the program would expire on September 30, 1997.¹

In 1995, there were 22 million nonimmigrant admissions to the United States, over 20 million of which were visitors for business or pleasure (traveling on "B" visas or under the visa waiver privilege). The 25 visa waiver countries accounted for 13.3 million nonimmigrant admissions, 10.1 million of which were under the VWPP. The balance included 2.5 million travelers who obtained B visas (most likely because their intended period of stay in the U.S. exceeded 90 days) and 661,000 who were issued other types of nonimmigrant visas (students, temporary workers, etc.)

Criteria for Participation

Under section 217 of the INA, an alien is eligible for the visa waiver privilege if the following conditions are met:

The alien must be seeking entry as a nonimmigrant visitor for business or pleasure for a period of 90 days or less.

The alien must be a national of an eligible country designated by the Attorney General.

The alien must complete designated forms.

¹ The expiration deadline was extended through November 7, 1997, pursuant to a Continuing Resolution.

The alien must be traveling on a carrier which has entered into an agreement with the Attorney General regarding transport of aliens, must not be a safety threat, must not have any previous violation after being admitted under the VWPP, and must have a return trip ticket.

The alien must waive all rights to review or appeal of an immigration officer's determination regarding the alien's admissibility to the U.S., and also must waive all rights to contest deportation, except on the grounds of seeking asylum.

Section 217 requires that a nation must meet the following conditions to be designated as a VWPP participant:

For the preceding 2-year period, the average refusal rate for its nationals seeking temporary visitor visas to enter the U.S. must be less than 2 percent, and the visa refusal rate for both years of the period must be less than 2.5 percent. These requirements ensure that the visa waiver privilege is extended only to those countries in which there is a low incidence of visa application fraud and whose nationals have a low rate of immigration violations once admitted to the United States.

The country must have or be in the process of establishing a machine readable passport program. This requirement helps to ensure that VWPP countries are using advanced technology and fraud-prevention measures in creation of their own passports and visas.

The country must offer reciprocal privileges to U.S. nationals.

The Attorney General must determine that U.S. law enforcement interests would not be compromised by the designation of the country.

In order to remain a VWPP participant, a country must maintain a "visa overstay rate" of less than 2 percent.² Section 635 of the IIRIRA made several significant changes to INA section 217, repealing provisions allowing for probationary status under the VWPP for countries not previously in the program whose visa refusal rate was more than 2 percent but less than 3.5 percent and giving the Attorney General primary authority to make determinations of eligibility under the program.

The VWPP and Illegal Immigration

Neither the State Department nor the Immigration and Naturalization Service (INS) report a significant level of violations on the part of aliens entering the United States under the visa waiver privilege. Each year, several thousand aliens who apply for admission under the privilege are refused by INS inspectors, either because they do not meet the nationality criteria (for example, holders of certain types of United Kingdom passports are not eligible) or because there is evidence that they do not intend to depart the

²The visa overstay rate is computed by dividing the total number of the country's nationals who during the previous fiscal year either (a) were excluded from admission as nonimmigrant visitors, (b) withdrew their applications for admission as nonimmigrant visitors, or (c) violated the terms of their admission as a nonimmigrant visitor into the total number of the country's nationals who applied for admission as nonimmigrant visitors during that year.

United States within the allotted 90 days and/or plan to work while they are in the United States. A small number of aliens admitted under the program are apprehended in the interior of the United States.

A potentially more serious problem arises from the very fact that aliens admitted under this program are required only to have a passport. The incidence and sophistication of passport, visa, and other types of document fraud is on the rise. An alien may present a passport from a visa waiver country that is valid in appearance but actually may be counterfeit or procured by fraud. Ironically, the primary line of defense against passport fraud is the greater security and sophistication of the visas issued by U.S. consulates—the very document that VWPP participants are not required to have. The relationship between passport fraud and potential breaches of security in the VWPP is one aspect of an ongoing inter-agency review of the program being directed by the Attorney General.

Rationale for 2-Year Extension of VWPP With No Change in Eligibility Criteria

The Subcommittee on Immigration and Claims held a hearing on June 17, 1997, regarding extension of the VWPP. At that hearing, the Administration requested a multi-year extension but opposed any amendment to change the criteria for admission to or participation in the VWPP. The hearing focused in large part upon the inability of the INS since FY 1992 to provide an accurate estimate of the visa overstay rates for individual countries, which, under section 217 of the INA, is critical to determining whether countries are allowed to remain in the program.

The Administration and witnesses from the travel and tourism industries testified that failure to extend the VWPP would cause disruption in State Department operations and hamper business travel and tourism to the United States. In the absence of the VWPP, the State Department would need to substantially augment its visa processing capacities for two dozen nations. These include Germany, Japan, and the United Kingdom, whose nationals account for approximately 6.5 million annual admissions under the VWPP. Requiring all such entrants to obtain visas prior to their departure for the U.S. would constitute an administrative burden to the State Department and could result in delayed or deferred travel.

These factors provide a strong argument for temporary extension of the VWPP. However, there are equally strong arguments for limiting the extension to a short period, such as 2 years. Chief among these is that the INS currently is unable to provide any country-by-country estimate of visa overstay rates, and in fact has no such statistics more recent than FY 1992. Accordingly, there is no basis on which to measure whether participating countries remain in compliance with statutory conditions of eligibility. In addition, INS efforts to improve this measurement during the past year have failed.

The 1996 Immigration Act required the INS to develop a system of departure controls designed to provide a more accurate measure of visa overstay rates. H.R. 2578 reinforces this requirement by mandating an annual report to Congress on country-by-country

visa overstay rates. It would be wise to postpone longer extensions of the VWPP until the INS meets or makes substantial progress in meeting the requirements imposed by the 1996 Act.

Administration Position

The Attorney General and the Assistant Secretary of State for Consular Affairs have recently endorsed a straight 2-year extension of the VWPP with no change in the eligibility criteria. The Attorney General cited in particular the ongoing inter-agency review of the VWPP. Issues in this review include what criteria are necessary to facilitate travel while ensuring the integrity of the non-immigrant admissions system. At the conclusion of this review, the Administration is expected to propose legislative changes regarding further extension of the program and criteria for admission to (and removal from) the program. Accordingly, this legislation does not authorize any change in the criteria for admission to or continued participation in the program.

COMMITTEE CONSIDERATION

On October 7, 1997, the Committee met in open session and ordered reported favorably the bill H.R. 2578 by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

Mr. Frank offered an amendment to change the criteria for qualification for designation as a participant country in the Visa Waiver Pilot Program which was defeated by a vote of 10 ayes to 16 nays.

Ayes—10	Nays-16
Mr. Conyers	Mr. Sensenbrenner
Mr. Frank	Mr. McCollum
Mr. Berman	Mr. Gekas
Mr. Nadler	Mr. Coble
Mr. Scott	Mr. Smith (TX)
Mr. Watt	Mr. Gallegly
Ms. Lofgren	Mr. Goodlatte
Ms. Jackson-Lee	Mr. Buyer
Mr. Delahunt	Mr. Bono
Mr. Rothman	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Jenkins
	Mr. Hutchinson
	Mr. Pease
	Mr. Cannon
	Mr. Hyde

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Rep-

representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2578, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 6, 1997.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2578, a bill to amend the Immigration and Nationality Act to extend the visa waiver pilot program, and to provide for the collection of data with respect to the number of nonimmigrants who remain in the United States after the expiration of the period of stay authorized by the Attorney General.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sunita D'Monte, who can be reached at 226-2840.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

cc: Hon. John Conyers, Jr.,
Ranking Minority Member

H.R. 2578—A bill to amend the Immigration and Nationality Act to extend the visa waiver pilot program, and to provide for the collection of data with respect to the number of nonimmigrants who remain in the United States after the expiration of the period of stay authorized by the Attorney General

H.R. 2578 would extend the visa waiver pilot program through 1999 and require the Attorney General to collect data and report on nonimmigrant aliens who remain in the United States after their authorized period of stay. The program permits certain nonimmigrants to enter the United States for a 90-day period without

obtaining a visa. It applies to roughly 10 million nonimmigrants who come from about 25 countries and generally do not stay in the United States longer than the law allows.

CBO estimates that H.R. 2578 would have no significant budgetary impact. Under current law, the visa fees affected by this bill are recorded as offsetting collections and are available to the Department of State for spending on consular affairs. This bill would result in forgone collections, but spending on consular affairs would be correspondingly lower. Because H.R. 2578 would affect direct spending, pay-as-you-go procedures would apply. H.R. 2578 contains no intergovernmental mandates, as defined in the Unfunded Mandates Reform Act of 1995 and would not affect the budgets of state, local, or tribal governments.

The estimate was prepared by Sunita D'Monte, who can be reached at 226-2840. This estimate was approved by Paul N. Van de Water, Assistant Director for budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8, clause 4 of the Constitution.

SECTION-BY-SECTION ANALYSIS

Section 1 of this legislation amends section 217(f) of the Immigration and Nationality Act to set an expiration date for the Visa Waiver Pilot Program of September 30, 1999.

Section 2 requires that not later than 180 days after enactment, the Attorney General shall implement a program to collect data on aliens who overstay their authorized period of admission into the United States. Section 2 also requires the Attorney General to report to Congress on June 30, 1999, and not later than June 30 of each year thereafter, with numerical estimates for each country of the number of aliens who have overstayed their authorized period of stay.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 217 OF THE IMMIGRATION AND NATIONALITY ACT

VISA WAIVER PILOT PROGRAM FOR CERTAIN VISITORS

SEC. 217. (a) * * *

* * * * *

(f) DEFINITION OF PILOT PROGRAM PERIOD.—For purposes of this section, the term “pilot program period” means the period be-

ginning on October 1, 1988, and ending on September 30, [1997] 1999.

* * * * *

DISSENTING VIEWS, H.R. 2578

We write in dissent to H.R. 2578, a measure to extend the visa waiver program, not in opposition to the concept, but principally to reiterate our objection to the existing program's misplaced rigid reliance on the refusal rate, the arbitrariness of which is well established. We very much appreciate the acknowledgment of this fact which Section 2 of H.R. 2578 represents, that overstay rates are a far more relevant criteria for determining eligibility for participation in the visa waiver program, and intend to work with supporters of visa waiver to promote as a policy goal the replacement of refusal rates with overstay rates, or some combination thereof.

But the program continues to demand a very low refusal rate as the determinant of eligibility, and this is unfair. Therefore, we supported an amendment offered by Mr. Frank of Massachusetts to temporarily and limitedly expand the eligibility criteria. That amendment, rejected 16–10, would have added a new category of eligibility, any country with a refusal rate below 4%, that had reduced in a previous fiscal year its refusal rate by 50% of the 1994 rate. While this new category is not country specific, it would have based on current figures included at least Portugal and South Korean, two ally nations that are ineligible under the rigid, and arbitrary, current criteria.

Again, the current program relies on statistics which are not relevant to the ultimate issue, which is whether or not past practice of citizens of that nation indicate an unsupportable tendency to remain in this country beyond the term of their visas. The refusal rate is simply not sufficiently probative of that fact. Given the current misreliance on that fact, we support a temporary change which would have permitted at least two strong ally nations which both have relatively low refusal rates, and low overstay rates, to participate, until the program can be changed to rely more on overstay rates. Unfortunately, that amendment was defeated.

We will continue to work with supporters of (and objectors to) visa waiver toward a program which has as its criteria for eligibility a fact which is more probative of whether or not individuals will in fact violate the terms of a visa. We believe that evidence is the overstay rate, and we are pleased that H.R. 2578 includes acknowledgment of that fact.

BARNEY FRANK.
MELVIN L. WATT.
STEVEN R. ROTHMAN.
MARTIN T. MEEHAN.